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**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

..

:: ORDER ::

Mahendra Singh Brar Vs. State of Rajasthan & Anr.

S.B. CIVIL WRIT PETITION NO.1713/2006.

Date of Order ::: 12.05.2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.S. Sandhu, for the petitioner.

...

BY THE COURT:

This writ petition has been submitted by a Member of Zila Parishad, Sriganganagar raising various objections and contentions particularly in relation to the resolution dated 15.10.2005 passed by the Zila Parishad for construction of a rest house. The said resolution at item No.4 of the minutes of the meeting held on 15.10.2005 has been submitted with this writ petition as Annexure-1 and reads in its entirety thus,-

“4. सामुदायिक भवन एवं विश्राम गृह:

अध्यक्ष महोदय की अनुमति से जिला परिषद की ओर से, सहायक अभियन्ता, जिला परिषद द्वारा गत बैठक में हुये निर्णय की अनुपालना में उपलब्ध राशि को 31.3.06 तक व्यय करने के उद्देश्य से जिला परिषद एसएफसी द्वितीय 3 प्रतिशत मद में उपलब्ध 32 लाख राशि में से एक विश्राम गृह, सामुदायिक भवन निर्माण कराये जाने का प्रस्ताव रखा । इस विश्राम गृह की कुल लागत 18.90 लाख रुपये तख्मीने के अनुसार है । इसके साथ-साथ जिला परिषद भवन में सभागार को सुव्यवस्थित करने तथा आवश्यक आधुनिक सुविधाएँ उपलब्ध करवाये जाने आदि कार्य का भी प्रस्ताव रखा । जिसमें तख्मीने के अनुसार 4.96 लाख रुपये की राशि की आवश्यकता होगी । कार्यालय भवन विस्तार तथा रख-रखाव, बिजली फिटिंग एवं शौचालय निर्माण आदि कार्य का प्रस्ताव रखा, जिसमें 4.50 लाख रुपये तख्मीने के अनुसार आवश्यक है । कार्यालय परिसर में चारो ओर खण्डजा, चारदीवारी तथा अपूर्ण गैराज कार्यालय के आवासों तथा कार्यालय के परिसर में मिटटी भराव तथा सैफ्टी टैंक आदि कुछ कार्यों का प्रस्ताव रखा, जिसमें तख्मीने के अनुसार 3.50 लाख रुपये की आवश्यकता होगी । सभी कार्यों को कराये जाने का सर्वसम्मति से अनुमोदन किया गया ।

सदस्य श्री महेन्द्र सिंह बराड़ द्वारा आर्कीटेक्ट से नक्शा तैयार करने तथा सार्वजनिक निर्माण विभाग अथवा किसी सक्षम विभाग से कार्य कराये जाने की मांग रखी, जिस पर अध्यक्ष महोदय द्वारा सदन में कहा कि प्रस्ताव कार्य कराने अथवा नहीं कराने का है, पहले इस सम्बन्ध में निर्णय लिया जावे, सदस्य महोदय सदन को प्रस्ताव से अलग दिशा में ले जाकर गुमराह नहीं करे । जिस पर सदन द्वारा कार्य कराये जाने हेतु सर्वसम्मति से सहमति दी, परन्तु सदस्य श्री बराड़ द्वारा मुख्य कार्यकारी अधिकारी से कार्य सम्पादन प्रक्रिया के सम्बन्ध में जानकारी चाही । मुख्य कार्यकारी अधिकारी द्वारा सदन में कहा गया कि जब अध्यक्ष महोदय के प्रस्ताव पर सदन द्वारा अनुमोदन कर दिया है तो कार्यकारी अधिकारी स्तर

से अलग कोई निर्णय नहीं लिया जा सकता, क्योंकि सदन एवं अध्यक्ष सर्वोपरि है। रही बात कार्य सम्पादन प्रक्रिया की, तो वह एसएफसी के दिशा-निर्देश तथा जीकेएन के प्रावधान अनुसार ही होगी, परन्तु श्री बराड़ सहमत नहीं थे। उन्होंने कार्यवाही में व्यवधान डालने की कोशिश की। अन्य सदस्यों द्वारा इस व्यवधान का विरोध किया तो श्री बराड़ कुछ समय के लिये सदन छोड़कर चले गये। उनके जाने के बाद पूरा सदन शांति से चला और सर्वसम्मति से कार्य सम्पादन कराने का निर्णय लिया गया।

जिला परिषद द्वारा विभिन्न विकास योजनाओं में समस्त जारी स्वीकृति, निरस्ती एवं संशोधन एवं आदेशों का सर्वसम्मति का अनुमोदन किया गया तथा समयबद्ध योजना की क्रियान्विति कर शत-प्रतिशत लक्ष्य अर्जित कर जिले को अग्रणी स्तर पर लाने हेतु निर्णय लिया गया।"

The petitioner submits that the resolution suffers from various illegalities and shortcomings and that he has already represented against it to the State Government (vide representations annexed with this writ petition as Annexure-4, 5, 6 and 7). The grievance of the petitioner is that Zila Parishad is proceeding illegally in relation to the construction of the said rest house and the State Government has failed to take appropriate steps despite representations.

After attempting to argue the matter for quite some time, learned counsel Mr. B.S. Sandhu appearing for the petitioner submitted that the petitioner would limit his submissions in this writ petition to the extent that the State Government must take decision on his representations; and

to that extent directions may be issued to the Government to expedite the matter and to take decision on his representations within short time.

Having heard learned counsel for the petitioner and having perused the material placed on record, this Court is satisfied that no case for issuance of any writ, order or direction at the instance of the petitioner is made out.

A perusal of the record and particularly the minutes of the meeting dated 15.10.2005 prima facie makes out that in relation to the particular construction work of rest house, the petitioner seems to be the lone voice of dissent and else the quorum has taken the decision to proceed with execution of the work.

So far the petitioner's right of expression is concerned, the same remain unexceptionable and his right to raise objection also cannot be denied. However, the petitioner for that matter cannot insist that his right to raise objection or to disagree or to question a particular resolution being passed by the Institution invests him with any further legal right so as to invoke writ jurisdiction of this Court for issuance of any writ, order or direction in relation to the functions of the Panchayati Raj Institution; and against a resolution passed by the quorum.

By virtue of Section 92 of the Rajasthan Panchayati Raj Act, 1994, the State Government is the chief

superintending and controlling authority in respect of all the matters relating to the administration of the Panchayati Raj Institutions and it may, by an order in writing, cancel any resolution or order passed by a Panchayati Raj Institution or any standing committee thereof, if in its opinion such resolution is not legally passed or is in excess or abuse of the powers conferred by or under this Act or under any law for the time being in force, or if its execution is likely to cause danger to human life, health or safety of person or property or is likely to cause a breach of the peace. However, before taking such action of cancelling any resolution of the Panchayati Raj Institution, the Government is required to afford reasonable opportunity to the concerned Institution. The power of the Government as superintending and controlling authority under Section 92 are, therefore, undoubted; and the petitioner has already approached the Government. It appears from the document Annexure-8 placed on record by the petitioner himself that the Chief Accounts Officer has already asked the Chief Executive Officer of Zila Parishad to inquire into the allegations of the petitioner about irregularities in passing the resolution and has sought comments after inquiry. It cannot, therefore, be said that the concerned authorities have simply ignored the representations made by the petitioner.

The authorities being dealing with the matter in accordance with law, this Court is clearly of opinion that the suggestion on behalf of the petitioner to issue innocuous type of directions to consider his representations within a stipulated period, do not fit in the fact situation of, and the rights sought to be professed in, the present case.

The writ petition remains fundamentally bereft of substance and is, therefore, rejected.

(DINESH MAHESHWARI), J.

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